

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1634 OF 2002

Dr. Sachin Bhalerao Salunkhe,
Age-27 years,
Occu:Medical Practitioner,
R/o-52, Shrikrishna Nagar,
Deopur, Dhule.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
- 2) Commissioner,
Dhule Mahanagarpalika,
Dhule,
- 3) Town Planning Authority,
Dhule.

...RESPONDENTS

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Mr.P.P. Chavan Advocate for Petitioner.
Mrs. Y.M. Kshirsagar, A.G.P. for Respondent
No.1.
Mr. S.P. Shah Advocate h/f. Mr.Mukul Kulkarni
Advocate for Respondent Nos.2 and 3.

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**CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.**

DATE : 23RD APRIL, 2015

ORAL ORDER :

1. Mr. Chavan, learned counsel for the Petitioner submits that construction permission was granted to the Petitioner by the erstwhile Respondent Municipal Council by following proper procedure, after verifying and satisfying itself about the location of the property etc. The Petitioner had purchased the Plot No.29 out of Survey No.70/6, City Survey No.2751 from its legitimate owner. Thereafter the Petitioner applied for construction permission. Pursuant to the construction permission, the Petitioner started construction. However, subsequently the construction permission is cancelled only on the basis of the complaint of neighbouring persons. Said persons had complained that there is existence of 30 ft. road. However, while cancelling construction permission, it was stated that said construction is being made on Nala. The learned counsel submits that lay out plan

sanctioned by the City Survey Office, nowhere shows existence of Nala near the plot of the Petitioner. The Petitioner has annexed the copy of lay out plan. According to the learned counsel, even the tonch map issued by City Survey Office nowhere shows existence of Nala near the plot of the Petitioner. Learned counsel submits that today joint layout plan issued by City Survey Office has been filed on record, which also nowhere shows existence of Nala near the plot of the Petitioner. Even the google map does not show existence of Nala near or through the plot of the Petitioner. According to the learned counsel, the Town Planning Department have camouflaged and prepared the joint lay out map of various survey numbers and erroneously shown existence of Nala near the plot of the Petitioner. According to the learned counsel the joint layout map prepared by the Town Planning Department is not authenticated one. The same is false and not in consonance with the lay out plan issued by City Survey Office. According

to the learned counsel the order of cancellation of construction permission is illegal.

2. Mr. Shah, learned counsel for Respondents submits that town planning authority has considered all the lay out plans and prepared combined map which shows existence of nala near the plot of the Petitioner. Even the photographs produced on record shows that bridge is required to be constructed on the side of road as Nala is passing through it. Construction sought to be made by the Petitioner is abutting the road. In spite of cancellation of construction permission, the Petitioner continued to construct over the plot, which is illegal. This Court only granted stay to demolition of construction and not permitted the Petitioner to construct further. In spite of that, the Petitioner continued the construction.

3. We have considered the submissions canvassed by the learned counsel for the

respective parties.

4. Naturally, after the construction permission was cancelled, the Petitioner could not have proceeded further with the construction. The Petitioner has filed photographs of construction on record, wherein the construction is completed up-to plinth level. This Court granted stay only to demolition of earlier construction. After cancellation of the construction permission and in absence of permission granted by this Court to further construct, the construction carried out by the Petitioner would be against the tenets of law.

5. Unfortunately, the Petitioner has not made the City Survey Office as party in the present Writ Petition. Naturally, it is the City Survey Office who is the authority to sanction the lay out plan. It is for the said authority to consider the pros and cons while sanctioning the lay out plan. It would not be possible for this

Court to consider the genuineness of the plans which are submitted by the Petitioner or the Respondents. It is for the City Survey Office to consider the same. The Petitioner has also filed on record combined lay out plan issued by the City Survey Office. It will be for the City Survey Office to verify the same.

6. There are various maps and plans filed on record. The ownership of the Petitioner over the plot No.29, C.T.S. No.2751 is not a matter of debate in present Writ Petition.

7. Considering above, we pass the following order:

O R D E R

(A) City Survey Office shall verify the lay out plan sanctioned in favour of the Petitioner.

(B) City Survey Office shall verify the joint lay out plan submitted by the Town Planning Authority and the joint lay out plan submitted by the present Petitioner and submit report to the Respondent Municipal Corporation, Dhule regarding the existence of Nala near/through the plot of the Petitioner or otherwise. The City Survey Office shall do this exercise expeditiously, preferably within THREE MONTHS.

(C) The Petitioner shall deposit the necessary expenses with the City Survey Office for the said purpose.

(D) On receipt of the report from City Survey Office, the Municipal Corporation, Dhule shall reconsider its order of cancellation of construction permission

and take decision upon the same expeditiously, after hearing the Petitioner, preferably within TWO MONTHS of the receipt of the report from the City Survey Office.

(E) In case some adverse orders are passed against the Petitioner, the Petitioner will be at liberty to assail the same.

(F) Till the Respondent Municipal Corporation takes decision, the Petitioner shall not carry out any further construction over the plot.

. The Writ Petition, accordingly disposed of with aforesaid observations. Rule disposed of. No costs.

[A.I.S.CHEEMA, J.]

asb/APR15

[S.V. GANGAPURWALA, J.]